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**IN THE UTAH SUPREME COURT**

CURTIS S. BRAMBLE, in his capacity as a Senator for the State of Utah; STEPHEN H. URQUHART, in his capacity as a House Representative for the State of Utah; BRENDA LARNER, an individual; LAURA JOHNSON, an individual; PEGGY MACIEL, an individual; and PARENTS FOR CHOICE IN EDUCATION, INC., a Utah corporation,

Petitioners,

vs.

OFFICE OF LEGISLATIVE RESEARCH & GENERAL COUNSEL, a government entity; and GARY R. HERBERT, in his capacity as Lieutenant Governor of the State of Utah,

Respondents.

**MEMORANDUM IN SUPPORT OF PETITION FOR REVIEW OF BALLOT TITLE ON HB 148 AND/OR FOR AN EXTRAORDINARY WRIT; AND FOR EMERGENCY RELIEF STAYING DEADLINE FOR SUBMISSION OF ARGUMENTS ON REFERENDUM**

Supreme Court No. 20070407

## TABLE OF AUTHORITIES

### Cases

Last week, the Office of Legislative Research and General Counsel ("Legislative Research") released the proposed ballot title for the HB 148 referendum (the "Ballot Title"). Rather than clarifying the confusion in the electorate, however, the Ballot Title simply compounds the problem by entirely ignoring HB 174 and its significant effect on HB 148. In doing so, the Ballot Title affirmatively misstates the contents of the referendum by representing that old and superseded sections of HB 148 are at issue and subject to a referendum vote. The failure of the Ballot Title to accurately describe the contents of the HB 148 referendum, particularly in light of the substantial publicity this issue has generated, is a disservice to the voters of Utah that should be immediately corrected.

Though the facts surrounding this matter are complex, the governing legal principle is not. In simplest terms, and for obvious reasons, laws that have been repealed or superseded are not subject to the referendum process. Referenda are not a forum for advisory votes on generalized policy issues. They are a specific means to repeal specific legislation that is slated to take effect. If the law, or portions thereof, has already been repealed or substantively superseded, there is neither a need nor a mechanism to submit that law (or its superseded portions) to a referendum. This has been the settled law in Utah for more than seventy years.

In this case, it is undisputed that HB 174 modified and substantively superseded the key provisions in HB 148, including the provisions that established the Scholarship

In the end, this is not about denying the voters the right to speak on vouchers. The sponsors of this referendum have simply picked the wrong constitutional mechanism to challenge the Scholarship Program. The Program is created by two different bills, one of which is constitutionally immune from the referendum process. Given this fact, if the Sponsors had wanted to challenge the Scholarship Program as a whole, they could have utilized (and still can utilize) the initiative process, rather than a referendum, because initiatives have no limitation on the repeal of laws passed by more than a two-thirds majority. The fact that the Sponsors erroneously decided to file a referendum petition does not change the limited scope of the referendum process or allow an advisory vote on a superseded law. This is a straightforward legal matter, and it leads to only one conclusion. The Petition should accordingly be granted.

## STATEMENT OF FACTS

### House Bill 148

1. On February 9, 2007, during its 2007 General Legislative Session, the Utah Legislature passed House Bill 148 ("HB 148"), which enacted the "Parent Choice in Education Act" (hereinafter the "Act"), Utah Code Sections 53A-1a-801 to -811.[1] A copy of HB 148 is included in Petitioners' Addendum as Add. "A".

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[1] The House of Representatives passed HB 148 on February 2, 2007. The Senate passed HB 148 on February 9, 2007. *See* http://le.utah.gov/~2007/status/hbillsta/hb0148.htm (last visited May 23, 2007). HB 148 was later signed by Governor Jon M. Huntsman, Jr. on February 12, 2007. *See id.*

5. HB 174 was relatively unique because, unlike an amendment passed in a subsequent legislative session, HB 174 sought to modify various aspects of a bill that had not yet taken effect or become law. For this reason, HB 174 did not simply add or subtract language from existing sections of code (since there were none at that time); rather, it substantively reenacted five key provisions of the Scholarship Program *in their entirety* and made substantive changes to those sections to address concerns of voucher opponents, including those sections addressing (1) the creation of the Program, (2) the eligibility of private schools to participate in the Program, (3) scholarship payments, (4) the Board's rulemaking responsibilities, and (5) review of the Program by the legislative auditor general.[4] *See* HB 174 §§ 53A-1a-804 to -806, -808, -811.

6. Every section enacted by HB 174 is preceded by language stating that the section at issue "is enacted to read," and each such section contains underlining indicating that the bill enacts full sections of code. *Id.*

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[4] Specifically, the Legislature modified and reenacted Sections 53A-1a-804, -805, -806, -808, and -811. In Section 804, the Legislature clarified that parents of scholarship students are responsible for transportation costs. *See* HB 174 § 53A-1a-804(5)(b). In Section 805, the Legislature mandated that, to be eligible to enroll a scholarship student, private schools are required to complete a criminal background check on teachers. *See id.* § 53A-1a-805(1)(g). The Legislature also prohibited private schools that encourage illegal conduct from participating in the Program. *See id.* § 53A-1a-805(3)(c). In Sections 806 and 808, the Legislature added the requirement that the Board make rules specifying how the income of prospective scholarship students' parents should be verified. *See id.* § 53A-1a-806(2)(b)(i), -808(1)(b). Finally, in Section 811, the Legislature changed the dates after which the legislative auditor general is required to review and issue a report on the Program. *See id.* § 53A-1a-811.

10. HB 174 became effective April 30, 2007 and is now law.[5] *See* Utah Const. art. VI, § 25.

**The Referendum Process**

11. Article VI, Section 1 of the Utah Constitution reserves to the people the power of referendum, providing that legal voters of the State of Utah may "require any law passed by the Legislature, *except those laws passed by a two-thirds vote of the members elected to each house of the Legislature*, to be submitted to the voters of the State, as provided by statute, before the law may take effect." Utah Const. art. VI, § 1 (emphasis added); *see also* Utah Code Ann. § 20A-7-102(2).

12. Title 20A, Chapter 7, Part 3 of the Election Code establishes the statutory procedures necessary for subjecting a law to a statewide referendum. *See* Utah Code Ann. §§ 20A-7-301 to -312. A copy of this part of the Election Code is included in Petitioners' Addendum as Add. "F".

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[5] It is worth noting that HB 174 reenacted the same dates for establishing the Scholarship Program as were set forth in HB 148. Because HB 174 is not subject to referendum and is presently in effect, the State Board of Education is statutorily required to adopt rules facilitating the Program by May 15, 2007, *see* HB 174 § 53A-1a-808(2), and parents who wish to receive a scholarship are statutorily required to submit applications to the Board by July 15, 2007. *See id.* § 53A-1a-804(3)(a). Compliance with these dates is essential to implementation of the Program in time for the upcoming school year. Unfortunately, due to the misleading nature of the referendum campaign, which has now been compounded by Legislative Research's inaccurate ballot title, the Board has refused to adopt any rules as required under HB 174, thus ignoring its statutory directive and effectively foreclosing parents who wish to take advantage of the Scholarship Program from this opportunity. A prompt decision by this Court would not only remedy the improper Ballot Title, but could also clarify these issues for the Board.

18. If a petition is declared sufficient, the law that is the subject of the petition is stayed from taking effect, and the governor is required to issue an executive order setting the matter for an election, either at the next general election or by special election. *See id.* § 20A-7-301(1)(b), (2).

19. Following a declaration of sufficiency, the lieutenant governor must deliver a copy of the petition and proposed law to Legislative Research. *See id.* § 20A-7-308(1). Legislative Research is then required to assign the referendum a title and number, "prepare an impartial ballot title for the referendum summarizing the contents of the measure," and return the petition and ballot title to the lieutenant governor. *Id.* § 20A-7-308(2)(a).

20. Once an act has been referred to the voters by a referendum petition, the presiding officer of the house of origin of the measure must appoint the sponsor of the measure and one other representative to draft an argument for the adoption of the measure. *See id.* § 20A-7-705(1)(a). If the measure submitted to voters was not adopted unanimously by the Legislature, the presiding officer of each house must also appoint one member who voted against the measure from each house to write an argument against the act. *See id.* § 20A-7-705(2)(a). Written arguments must be submitted to the lieutenant governor by June 1st. *Id.* § 20A-7-705(3)(a).

21. Only laws that will "take effect" are subject to the referendum process. *See id.* §§ 20A-7-102(2), -301(2).

25. Thereafter, the Petition Sponsors prepared referendum packets pursuant to Utah Code Section 20A-7-304(4), to which they attached copies of HB 148 and circulated the packets for signatures. *See* Sample Referendum Packet, a copy of which is included in Petitioners' Addendum as Add. "I". Petition Sponsors attached the full text of HB 148 despite the fact that five sections of HB 148 had since been modified and substantively superseded by HB 174. *See* HB 174 §§ 53A-1a-804 to -806, -808, -811.

26. HB 174 was not a secret. It passed before the referendum application was even submitted, and it was covered in the local media almost immediately after the signature drive began. *See* "New Fight Over Vouchers," *Deseret Morning News,* March 9, 2007, a copy of which is included in Petitioners' Addendum as Add. "J". Less than a month later, Utah Attorney General Mark Shurtleff issued an opinion to Governor Huntsman confirming that the central portions of the Scholarship Program were no longer established by HB 148 because they had been substantively repealed, modified, and reenacted by HB 174. *See* Opinion Letter from Mark Shurtleff to Governor Jon M. Huntsman, Jr., dated March 27, 2007, a copy of which is included in Petitioners' Addendum as Add. "K".

27. Despite this notice and the clear legal effect of HB 174, it appears the Petition Sponsors continued to circulate the Petition with the full text of HB 148 attached, as if it had never been modified or superseded, and as if those signing the Petition would be forcing a vote on the Program as a whole, rather than just those provisions of HB 148

- provides for scholarships within that program of $500 to $3,000, depending on family size and income, increasing those scholarship amounts in future years; and
- allows school districts to retain some per-student funding for scholarship students who transfer to private schools.

Are you for or against H.B. 148 taking effect?

Letter from Michael E. Christensen, Director, to Lieutenant Governor Gary R. Herbert, dated May 15, 2007, a copy of which is included in Petitioners' Addendum as Add. "M".

31. Remarkably, Legislative Research drafted this Ballot Title despite its acknowledgement in its cover letter to the Lieutenant Governor that HB 174 was now law, had taken effect, and was not subject to the referendum; *see id.*, and despite the fact that the Utah State Legislature explicitly identifies on its official website that only the unsuperseded sections of HB 148 are "subject to voter approval." *See* Utah State Legislature website, http://le.utah.gov/~code/TITLE53A/53A02.htm, a copy of which is included in Petitioners' Addendum as Add. "W".

32. Legislative Research claimed that it did not need to address the impact of HB 174 on HB 148 in the Ballot Title, but would instead "consider the provisions enacted by H.B. 174, which are now law" in the impartial analysis it is required to provide for the voter information pamphlet. *See id.* That pamphlet is not required to be distributed to the public until fifteen (15) days before the election. *See* Utah Code Ann. § 20A-7-702(3).

33. As the sponsor of and designated representative appointed to draft an argument in support of HB 148 for the voter information pamphlets, Representative Urquhart and Senator Bramble, respectively, must submit their arguments on the

## ARGUMENT

### I. THIS COURT SHOULD REVISE THE WORDING OF THE BALLOT TITLE BECAUSE IT IS PATENTLY FALSE.

For obvious reasons, there is neither a need nor a mechanism to submit laws that will not take effect to a referendum. HB 174, which has taken effect and cannot be subject to a referendum, substantively superseded various provisions in HB 148, altered those provisions in substantive ways, and reenacted the relevant code sections in their entirety. All of this occurred *before* HB 148 would have taken effect, and now those superseded provisions never will become effective, regardless of the outcome of any referendum. This is a straightforward legal conclusion that is clear from the plain language of the bills.

Despite this fact, Legislative Research has prepared a Ballot Title stating that HB 148 "establishes a scholarship program" (which it no longer does), and that these provisions "will take effect . . . if approved by voters." Given the state of the law, and Legislative Research's own acknowledgement of the impact of HB 174 on HB 148, this Ballot Title is inexplicable and patently false. This Court should revise the Ballot Title to correctly describe the contents of the referendum—namely, those provisions of HB 148 that have not been substantively superseded and that will take effect if approved by the voters.

provisions of that bill have been modified and substantively superseded, rendering a vote on those provisions moot. More egregiously, the Ballot Title affirmatively misrepresents the legal status of HB 148, stating that the portions of HB 148 that "establish[] a scholarship program" for certain qualifying school-age children and that "provide[] for scholarships within that program," will "*take effect . . . if [HB 148] is approved by voters*." *See* Ballot Title, Add. M (emphasis added). This description is simply false, as those portions of HB 148 were substantively superseded and changed by HB 174, and therefore ceased to be the law before they ever went into effect. *Compare* HB 148 § 53A-1a-804 to -806, *with* HB 174 § 53A-1a-804 to -806. Those superseded provisions of HB 148 cannot be subject to a referendum and should not be described in the Ballot Title.

This has been settled law in this state for more than seventy years. In *Kiegley v. Bench*, 63 P.2d 262 (Utah 1936), sponsors circulated and obtained a sufficient number of signatures to subject a city resolution to a referendum. *See id.* at 263-64. When the city recorder refused to file the petition for referendum, the sponsors filed for a writ of mandamus with this Court. *See id.* at 264. Although the city rescinded the resolution while the writ was pending, the sponsors maintained that the referendum nevertheless should be placed on the ballot. *See id.* The city recorder countered that because the resolution had been rescinded, the referendum was moot and the proceeding should be dismissed. *See id.*

This Court agreed with the city recorder, explaining as follows:

For the same reasons, other courts faced with these facts have had little trouble concluding that moot provisions are not subject to referendum. *See, e.g., Save Our Aquifer v. City of San Antonio*, 108 Fed. Appx. 863, 864 (5th Cir. 2004) (unpublished per curiam opinion) (dismissing challenge to referendum procedure as moot where city repealed the ordinance at issue); *cf. State ex rel. Carter v. State*, 481 S.E.2d 429, 430-31 (S.C. 1997) (dismissing constitutional challenge to original act where act was subsequently amended; because the originally enacted statute no longer existed, plaintiff posed no challenge to the act *as amended* and his action was moot).

Because the superseded sections of HB 148 will never "take effect," any referendum on those sections would be moot. Consequently, the superseded sections of HB 148 cannot be the subject of a referendum. The Ballot Title, which states otherwise, is patently false and should be revised to correctly describe the referendum as applying only to those portions of HB 148 that were not substantively superseded by HB 174. For example, a correct ballot title could read as follows:

> In February 2007, the Utah Legislature passed HB 148, Education Vouchers. The following portions of HB 148 that have not been superseded by subsequent legislation will take effect only if approved by voters:
>
> - Title, findings and purpose, and definitions;
> - A provision allowing school districts to retain some per-student funding for scholarship students who transfer to private schools;

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law bad faith doctrine cannot trump the constitutional limitation preventing bills passed by more than a two-thirds majority from being subject to a referendum.

actual scope of the measure, culminating in a voter information pamphlet that is facially inconsistent with the actual Ballot Title. Legislative Research's approach also optimistically assumes the voting public carefully reads the voter information pamphlet, rather than simply reading the ballot title at the polls.

For these reasons, this exact argument was rejected by the Washington Supreme Court in *In the Matter of the Ballot Title for Initiative 333,* 558 P.2d 248 (Wash 1997), which explained as follows:

> Further, it is unreasonable to limit review of the ballot title to proposers on the grounds that opponents can challenge the explanatory statement in the voters' pamphlet. The ballot title appears in the voters' pamphlet. The ballot title also appears on the ballots cast by voters at the election. ***We can safely assume that not all voters will read the text of the initiative or the explanatory statement. Some voters may cast their votes based on the ballot title as it appears on their ballots. Thus, the outcome of the vote may be affected by the tenor of the ballot title.***

*Id.* at 252 (emphasis added) (citations omitted).

It is incumbent upon Legislative Research to prepare a ballot title that is accurate as to the contents of the measure. Their failure to do so here will mislead a significant number of voters and may result in an outcome that is detrimental to public schools when the voters intended the exact opposite result. This Court should correct the inaccurate Ballot Title and specify which portions of HB 148 are actually subject to a referendum.

### C. The Issue of Whether HB 174 Was Intended as an "Amendment" is Not Relevant to the Ballot Title.

In the extensive media coverage of this dispute, much attention has been devoted to the question of whether the Legislature intended HB 174 as an amendment to HB 148,

The Utah Constitution makes no exception for bills that are titled "amendments," and no conclusion about legislative intent changes this limitation. Had the Legislature wanted to provide that HB 174 would not take effect if there were a successful referendum challenge to HB 148, it could have done so by delaying the effective date of HB 174 or by simply saying so. Since it did not, the plain language controls.[9]

### 2. HB 174 Made Substantive Changes to the Program That May Address Voter Concerns.

Furthermore, the substantive differences between HB 148 and HB 174 suggest another deep infirmity with the Ballot Title. HB 174 did not merely reenact sections of HB 148 verbatim. Rather, it made substantive changes to those sections designed to address the concerns of voucher opponents, such as the provision requiring criminal background checks on teachers, *see* HB 174 § 53A-1a-805(1)(g), and the provision disqualifying private schools that encourage illegal conduct from participating in the

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For this reason, HB 174 substantively superseded the corresponding provisions of HB 148 *in their entirety*, meaning those provisions in HB 148 would never take effect.

[9] To the extent that legislative intent is relevant here, it is evidenced by the statute's plain language. *Martinez v. Media-Paymaster Plus*, 2007 UT 42, ¶ 46, __ P.3d __; *Florida Asset Fin. Corp. v. Utah Labor Comm'n*, 2006 UT 58, ¶ 9, 147 P.3d 1189; *Aris Vision Inst., Inc. v. Wasatch Prop. Mgmt.*, 2006 UT 45, ¶ 9, 143 P.3d 278 ("When interpreting statutes, '[the court's] primary role is to give effect to the legislature's intent as set forth in the statute's plain language.'" (citation omitted)). If the statute is unambiguous, the court may not look to other interpretive tools such as legislative history and must, instead, confine its interpretation to the plain language of the statute. *Martinez*, 2007 UT 42 at ¶ 47; *Florida Asset*, 2006 UT 58 at ¶ 9; *Adams v. Swenson*, 2005 UT 8, ¶ 8, 108 P.2d 725. In doing so, the court will presume "'the legislature used each word advisedly' and read 'each term according to its ordinary and accepted meaning.'" *Martinez*, 2007 UT 42 at ¶ 46 (citation omitted).

As a threshold matter, this issue is irrelevant to the accuracy of the Ballot Title. Regardless of the legal effect of a referendum on HB 148, the Ballot Title cannot incorrectly state that the superseded provisions of HB 148 will take effect. It must describe only those provisions that can be subject to the referendum process, which do not include any provisions of HB 174. However, it is worth noting that the *J.P.* decision is inapplicable to the unique facts of this case, where an amendment is passed in the *same legislative session as the original bill*, superseding the bill before it ever takes effect.

*J.P.* involved a constitutional challenge to the best interests of the child standard enacted in 1980 under a statute addressing the termination of parental rights. *See id.* at 1365. In 1981, in a subsequent legislative session and after the underlying law already took effect, the Legislature amended the statute to add new criteria for the best interest standard. *See id.* at 1369 & nn.3-4. Significant to its holding that the 1980 law was a "trunk," and the 1981 amendment a mere "branch," the *J.P.* court found that the 1981 amendment, unlike HB 174, did *not* reenact or supersede the underlying law as a whole. Here is the Court's language in its full context:

> The 1981 amendment does not remain in effect after this invalidation of the best interest standard enacted in the 1980 amendment. ***The 1981 amendment only added new criteria for determining the child's best interest; it did not enact or reenact the best interest standard itself, since that standard was already in force before that amendment was passed.*** U.C.A., 1953, § 68-3-6. When the trunk is uprooted, the branch engrafted upon it must also fall.

*Id.* at 1378 n.14 (emphasis added).

bills, one of which is referendum-proof, a referendum cannot repeal the entirety of the Program. The Ballot Title should not state otherwise. The Petition Sponsors could have (and still can), however, seek a repeal of the entire Program through the initiative process, which contains no two-thirds limitation, or through their right to speak through their duly elected representatives. *See* Utah Const. art. VI, § 1; Utah Code Ann. §§ 20A-7-201 to -214. The fact that the Sponsors chose to pursue a defective referendum process instead of these alternatives does not warrant misleading the voters about the actual contents of the referendum, nor does it allow them to circumvent the constitutional limitation on referenda.

In sum, this is an unusual matter involving unique facts, and it has understandably generated considerable public confusion. The Ballot Title drafted by Legislative Research does a disservice to Utah voters by failing to clarify these issues and by affirmatively misstating what the referendum actually concerns. Because HB 174 substantively superseded key provisions of HB 148, including those provisions that established the Scholarship Program and provided for scholarships within that Program, the Ballot Title is patently false. This Court should rewrite the Ballot Title to correctly state that only those provisions of HB 148 that were not substantively superseded by HB 174 are the subject of the referendum.

identified HB 148 in its entirety, rather than only those portions of the bill that remained after the passage of HB 174. *See* Petition, Add. H. Similarly, the Petition Sponsors attached the full text of HB 148 in their referendum packets, *see* Petition Application, Add. I, and continued to do so even *after* they were informed by the Utah Attorney General Mark Shurtleff that the central portions of the Scholarship Program identified in the Petition were substantively superseded by HB 174. *See* Attorney General Letter, Add. K. The clear result of these failures is that a significant number of voters who signed the Petition were effectively misled.

The requirement that petitions and petition sponsors correctly identify the law on which a proposed referendum is sought not only safeguards voters, but also protects the core integrity of the election process. This requirement assists voters in deciding whether to sign or oppose the petition by ensuring that voters know what they are signing, *see Kyzar v. Memphis*, 201 S.W.3d 923, 928 (Ark. 2005), and protects electors from confusing or misleading information. *See Hebard v. Bybee*, 65 Cal. App. 4th 1331, 1338 (1998); *see also Mervyn's v. Reyes*, 69 Cal. App. 4th 93, 102-03 (1998) ("[I]t is imperative that persons evaluating whether to sign the petition be advised which laws are being challenged and which will remain the same."). Moreover, as one court accurately noted, a petition serves the important function of screening laws for referendum and "ensur[ing] that only propositions with significant public support are included on the ballot." *Citizens for Implementing Med. Marijuana v. Anchorage*, 129 P.3d 898, 901-02

petition the specific portion of the bill at issue, the petition's sponsors were not "entitled to have the referendum placed upon the ballot." *Id.* at 484.

Other courts have reached similar conclusions. *See e.g., Hebard*, 65 Cal. App. 4th at 1338 (invalidating petition that was incomplete and misleading); *Mervyn's*, 69 Cal. App. 4th at 102-03 (invalidating certification of petition because petition omitted key portions of subject of initiative); *Nelson v. Carlson*, 17 Cal. App. 4th 732, 739 (1993) (denying petition as insufficient where petition failed to attach key portion of general plan); *Markus v. Bd. of Elections*, 259 N.E.2d 501, 503 (Ohio 1970) (holding petition insufficient when it omitted information about effect of bill).

The remedy for these failures, as the foregoing cases recognize, is a court-imposed injunction. This remedy is obviously more extreme than attempting to rectify the confusion *post hoc* in the Ballot Title. However, there are at least two reasons that an injunction is the only way to fully safeguard the integrity of the election process.

First, an accurate Ballot Title may actually serve to confuse voters, especially those who signed the Petition believing they were subjecting HB 148 as a whole to a referendum when, in fact, they were only subjecting to referendum those parts not substantively superseded by HB 148. *See Grammas v. Batavia Township Bd. of Trustees*, No. CA95-10-069, 1996 Ohio App. LEXIS 1566, *5-6 (Ohio Ct. App. April 22, 1996) (invalidating a referendum post-election where a misleading petition, paired with an accurate ballot, only further confused voters about the effect of the referendum).

number." *Id.* at ¶ 3. Similarly, the governor's obligation to call an election on the measure is mandatory following the lieutenant governor's declaration of sufficiency. *See* Utah Code Ann. § 20A-7-301(1)(b).

This leaves the courts as the check on misleading and defective referendum petitions, as the Election Code suggests. *See* Utah Code Ann. § 20A-7-307(3)(c) (authorizing this Court to enjoin the lieutenant governor from printing a ballot title if "any petition filed is not legally sufficient"). If this Court did not have that authority, there would be no way to prevent an improper and misleading ballot measure from proceeding in mandatory fashion to an election.

In short, in light of the legal status of HB 148, there is a clear and obvious disconnect between the actual subject of the referendum and what the Petition Sponsors erroneously represented on the Petition itself. The only way to fully remedy this defect and preserve the integrity of the election process is to permanently enjoin the Lieutenant Governor and other officers from printing the Ballot Title for HB 148 on the official ballot for the scheduled special election.

## III. THIS COURT SHOULD STAY THE DEADLINES FOR SUBMISSION OF ARGUMENTS ON THE REFERENDUM.

Finally, in order to allow this Court to hear and resolve these issues in a meaningful way, this Court should grant emergency relief under Rule 8A of the *Utah Rules of Appellate Procedure* staying all deadlines for the submission of arguments for the voter information pamphlet on HB 148. Emergency relief is necessary because the

## CERTIFICATE OF SERVICE

I hereby certify that on the 24 day of May, 2007, I served a copy of the foregoing **MEMORANDUM IN SUPPORT OF PETITION FOR REVIEW OF BALLOT TITLE ON HB 148 AND/OR FOR AN EXTRAORDINARY WRIT; AND FOR EMERGENCY RELIEF STAYING DEADLINE FOR SUBMISSION OF ARGUMENTS ON REFERENDUM** by transmitting copies, via hand-delivery, addressed or delivered to the following:

Office of Legislative Research & General Counsel
c/o Michael E. Christensen, Director
Utah State Capitol Complex
House Building, Suite W210
Salt Lake City, Utah 84114
Fax (801) 538-1712

Gary R. Herbert
Lieutenant Governor of the State of Utah
Utah State Capitol Complex
P.O. Box 142220
Salt Lake City, Utah 84111
Fax (801) 538-1133

Personal service on the foregoing Respondents is in the process of being effected. In addition, a copy of the foregoing was sent via overnight mail to the following:

Sarah Robertson Meier
3937 Hazy Way
West Jordan, Utah 84084

Kim Richard Burningham
932 Canyon Crest Drive
Bountiful, Utah 84010